

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

STATE OF TENNESSEE, * C.C.A. # 01C01-9505-CC-00127
Appellant, * DICKSON COUNTY
VS. * Hon. Robert E. Burch, Judge
JAMES C. NELSON and * (State Appeal)
ALICIA NELSON, *
Appellees. *

FILED

May 9, 1996

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Appellate Court Clerk**

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendants, James C. Nelson and Alicia Nelson, were indicted for possession of marijuana with the intent to resell. James Nelson was also indicted for possession of a weapon with the intent to go armed. In this appeal by the State of Tennessee, the single issue presented for review is whether the trial court erred by ordering the suppression of evidence acquired incident to the issuance of a search warrant. We affirm the judgment of the trial court.

The facts are not in dispute. Detective Mike Holman obtained a search warrant which provided, in part, as follows:

Proof by affidavit having been made before me by Detective Mike Holman, Dickson Sheriff's Department that there is probable and reasonable cause for believing that the offense of unlawful possession of a controlled substance, to wit: Marijuana is being committed by James C. Nelson and Alicia Nelson at or on the premises described in the affidavit attached thereto which is hereby referred to for its contents, said contents being incorporated herein, and also hereinafter described as being located in Dickson County, Tennessee, and more particularly described as follows: 308 Preacher Road, Charlotte, Tennessee.

The affidavit upon which the search warrant was issued provided, in pertinent part, as follows:

[T]he affiant, Detective Mike Holman, Dickson Sheriff's Department, who on oath, says that there is now on the premises, located at and also described as follows: Being located in Dickson County, Tennessee, and more particularly described as follows: 308 Preacher Road, Charlotte, Tennessee,

and on the person(s) of or in the possession of James C. Nelson and Alicia Nelson, the following personal property to wit: certain controlled substance, to wit:

Marijuana.

As a result of the search, officers seized evidence used to indict each of the defendants. Their motion to suppress the evidence on the grounds that the warrant and supporting affidavit did not sufficiently describe the place to be searched was sustained by the trial court.

The defendants reside at 308 Preacher Road. Their rural residence was located on a gravel, dead-end road among four other houses. Neither the names of the defendants nor their street number appeared on their mailbox or any other part of their property. Only two of the five houses on Preacher Road were marked by either a name or street number. The house closest to the Nelsons had only a name on the mailbox. The house two doors away had both a name and a number on the mailbox. Nothing in the record establishes any sort of sequence in the assignment of the street numbers.

At the conclusion of the hearing, the trial court ruled that the language contained in the affidavit did not sufficiently describe the premises to be searched:

[T]he Court is of the opinion that the address is insufficient. The officer cannot take the search warrant--and I think the requirement of law is that he take the search warrant, and nothing else, and execute that search warrant based just on that search warrant; not go ask the postmaster, not find somebody, or knock on doors till you find him. Nothing, as I understand the rule--and this is from a case--nothing can be left to the discretion of the officer....

The officer has to take the search warrant, follow the directions on the search warrant and without any reference

to any other person or document, go directly to that location. Based on a description of property and the search warrant, that cannot be done. This search warrant is insufficient. The motion to suppress is granted.

The state argues that the "trial court's 'legal conclusions' [that the description was insufficient] were unsupported by authority, are contrary to well-settled authority, and are incorrect." We disagree.

Both state and federal law require that a search warrant particularly describe the place to be searched. See U.S. Const., amend. IV; Tenn. Const., art. I, § 7; Tenn. Code Ann. § 40-6-103. Tenn. R. Crim. P. 41(c) provides in part that "[i]f the magistrate is satisfied that grounds for the application [for a search warrant] exist or that there is probable cause to believe that they exist, the magistrate shall issue a warrant identifying the property and naming or describing the person or place to be searched."

In State v. Bostic, 898 S.W.2d 242, 245-46 (Tenn. Crim. App. 1994), our court addressed the issue of what satisfies the "particular description requirement" of a search warrant:

The Fourth Amendment to the United States Constitution requires a search warrant to contain a description of the place to be searched with such particularity that the searching officer may with reasonable effort ascertain and identify the intended place. Article I, Section 7 of the Tennessee Constitution prohibits general warrants and T.C.A. § 40-6-103 requires search warrants to describe particularly the property and the place to be searched. This requirement is

met if the description "particularly points to a definitely ascertainable place so as to exclude all others, and enables the officer to locate the place to be searched with reasonable certainty, without leaving it to his discretion." ...

* * *

...The rule of particularity is relaxed with regard to rural residences because it is often difficult to describe a rural property with precision and the likelihood of error is somewhat lessened.

(Citations omitted).

A correct street address in a search warrant, even if no other description is given, may be particular enough to withstand constitutional scrutiny. See United States v. Dancy, 947 F.2d 1232, 1234 (5th Cir. 1991). It is also true that in a rural setting a description of the property by naming the occupant may satisfy the "particularity requirement." See State v. Bostic, 898 S.W.2d at 246; see also Hatchett v. State, 208 Tenn. 399, 346 S.W.2d 258 (1961). A description in the warrant, facially sufficient, may, however, fail when compared to the actual description of the place to be searched. See 2 Wayne R. Lafave, Search and Seizure § 4.5(a) (3d ed. 1996).

Here, the search warrant and its supporting affidavit failed to specifically identify the place to be searched as the residence of the defendants. Moreover, there was no name or address at the residence identifying the place to be searched. Three of the five residential properties located on the rural road contained no name or street number. No circumstances were presented by the executing officer which

might have cured the defective description within the warrant. See State v. Bostic, 898 S.W.2d at 246; see also United States v. Gahagan, 865 F.2d 1490 (6th Cir.), cert. denied, 492 U.S. 918 (1989). The affidavit describing the place to be searched had been provided by a confidential informant. There is no indication in this record that the officer who executed the warrant was familiar with the location of the Nelson residence. Under these circumstances, the judgment of the trial court must be affirmed.

Gary R. Wade, Judge

CONCUR:

Paul G. Summers, Judge

Joseph M. Tipton, Judge